In the High Court of Judicature at Madras

Dated : 04.09.2007

Coram :

The Honourable Mr.Justice K.RAVIRAJA PANDIAN
and
The Honourable Mrs.Justice CHITRA VENKATARAMAN

Tax Case (Appeal) No.353 of 2004

The Commissioner of Income Tax-I
Coimbatore .. Appellant

Vs

M/s.Annamalai Finance Limited
252, Mettupalayam Road
Coimbatore - 43. .. Respondent

TAX CASE (APPEAL) under Section 260A of the Income Tax Act against the order of the Income Tax Appellate Tribunal Madras 'C' Bench dated 22.10.2003 made in I.T.A.No.2181/Mds/93 for the assessment year 1990-91 against the order of the Commissioner of Income Tax (Appeals) Coimbatore dated 13.07.1993 and made in IT Appeal No.279-C/93-94. against the order of the Deputy Commissioner of Income Tax, Special Range - I, Coimbatore dated 26.03.1993 and made in PAN/GIR.No.CQ-2204/SR-I/CBE.

For Appellant : Mr.Muralikumaran, Senior Standing Counsel (Income Tax)
For Respondent : Mr.Venkatanarayanan

JUDGMENT

JUDGMENT OF THE COURT WAS DELIVERED BY K.RAVIRAJA PANDIAN,J

The relevant assessment year is 1990-91. The appeal is filed formulating the following substantial questions of law:-

1. Whether on the facts and in the circumstances of the case, Income Tax Tribunal was right in holding that the sales tax collected by the assessee on lease rentals but not paid to the State Government could not be disallowed under Section 43B on the ground that the assessee had disputed the levy?"

2. The necessary facts as culled out from the statement of facts are as follows:-

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The respondent/assessee was a leasing company. For the assessment year, 1990-91, the assessee filed its return on 31.12.1990. In the course of assessment proceedings, the assessing officer found that the assessee had collected sales tax on the transactions of leasing its assets, but the same had not been paid either before 31.3.1990 or before 31.12.1990 i.e., the date of filing the return. As per the Tamil nadu General Sales Tax Act as amended with effect from 1.4.1986, leasing companies were required to pay sales tax on their lease transactions. The assessee challenged this amendment before this Court which granted the stay of collection of the same. However, the assessee collected the sales tax from the customers and made provision for sales tax in the books of accounts. But since no payment was made the assessing officer disallowed the claim of Rs7,57,039/- under Section 43-B of the Act. Aggrieved by the order of the assessing officer, the assessee filed an appeal before the Commissioner of Income Tax (Appeals). The Commissioner of Income-tax (Appeals) upheld the disallowance made by the assessing officer. On appeal to the Income-tax Appellate Tribunal, the Tribunal held that the assessee's claim for deduction was in order and granted the relief. The revenue by filing this appeal questioned the correctness of the order of the Tribunal.

3. We heard the counsel on either side and perused the materials on record.

4. The issue of collection of sales tax and keeping it in contingent deposit and treating of the same was the subject matter before this Court in the case of COMMISSIONER OF INCOME-TAX VS. SOUTHERN EXPLOSIVES COMPANY reported in (2000) 242 ITR 107, wherein the Division Bench of Court held thus:

> "The true character of a receipt must be judged with reference to the reasons for the collection, and the liability for meeting which the collection was made. When the liability is a statutory liability, which the assessee was required to meet and for meeting which it was by the statute or authorities permitted to collect the amount required from its customers, the true character of the collection is a trading receipt. By calling a portion of the amount deposit, it cannot be said that the assessee had constituted itself as a trustee, and therefore the amounts received were not required to be regarded as part of its trading receipt."

5. While laying down the law like that, on the facts of the case, the Division Bench further held thus:

> "The amounts collected by the assessee were amounts which were meant to be utilised by the assessee for meeting its tax liability. Even if the assessee had paid over the entire amount received by it as deposit towards sales tax to the State Government, it would still have been open to the assessee to seek refund if the assessee wished to claim such refund on the ground that the tax had been levied at a higher rate than the rate

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permissible. The fact that the assessee had chosen to adopt the device of labelling a part of the amounts collected towards its sales tax liability as deposit could not make a difference. The amount formed part of the assessee's income."

6. The above decision has been rendered by the Division Bench of this Court after taking stock of almost all the earlier decisions on that issue. In view of the exposition of law laid down by this Court after taking note of all the Supreme Court judgments on this issue that the receipt of the amount for payment of sales tax and keeping it in deposit would amount to a revenue receipt, the appeal is allowed and the question of law is answered in favour of the revenue.

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

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To

1. The Assistant Registrar,
   Income Tax Appellate Tribunal,
   IIIrd Floor, Rajaji Bhavan,
   Besant Nagar, Chennai-600 090
2. The Commissioner of
   Income-tax (Appeals)
   Coimbatore
3. The Deputy
   Commissioner of
   Income Tax, Special Range-I
   Coimbatore.
4. The Commissioner of Income Tax - I,
   Coimbatore.

1 CC To Mr.N.Muralikumaran, Advocate, SR NO.55225.

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